

**FILED**

OCT 20 2005

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY                       
DEPUTY CLERK

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[ADDITIONAL COUNSEL ON SIGNATURE PAGE]

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

NATURAL RESOURCES DEFENSE COUNCIL, *et al.*,

Plaintiffs,

v.

KIRK RODGERS, as Regional Director of the  
UNITED STATES BUREAU OF RECLAMATION,  
*et al.*

Defendants,

ORANGE COVE IRRIGATION DISTRICT, *et al.*,

Defendants-Intervenors.

Case No.  
CIV-S-88-1658 LKK/GGH

**STIPULATION RE  
CONFIDENTIALITY FOR  
DISCUSSIONS WITH SELECTED  
EXPERTS RE SETTLEMENT**

1 Plaintiffs Natural Resources Defense Council, *et al.* ("Plaintiffs"), defendants Kirk Rogers, *et*  
2 *al.* (the "Federal Defendants") and Orange Cove Irrigation District, *et al.* (the "Friant Defendants")  
3 (collectively, "the Parties"), by and through respective attorneys of record, hereby stipulate and agree  
4 as follows:  
5

6 1. Pursuant to the Court's Discovery Plan Order and Schedule and Rule 26 of the Federal  
7 Rules of Civil Procedure, the Parties have designated expert witnesses and are engaged in the  
8 preparation for depositions of expert witnesses.  
9

10 2. Plaintiffs and the Friant Defendants have engaged in preliminary discussions regarding  
11 the potential settlement of this matter. The Federal Defendants may join such discussions at some  
12 point in the future.

13 3. To proceed further with such settlement discussion, Plaintiffs and the Friant Defendants  
14 believe it is necessary to discuss certain issues with certain of their respective designated expert  
15 witnesses. Although not yet parties to these discussions, the Federal Defendants may have similar  
16 concerns should they participate in such discussions in the future.  
17

18 4. To enable such discussions to take place, and not to have such discussions become the  
19 subject of discovery or other disclosure or put to any other evidentiary use in this case or any other  
20 proceeding, the Parties agree as follows:  
21

22 (a) Discussions and the exchange of information between the Parties (including their  
23 counsel and agents) and the designated expert witnesses identified in Paragraph 4(b) below (including  
24 communications between the designated expert witnesses among themselves) shall be deemed to be  
25 privileged and confidential to the same extent as if the attorney-client privilege and work product  
26 doctrine applied to such communications and notwithstanding any other statutory and decisional law  
27 to the contrary; and  
28

(b) The protections against disclosure provided by this Stipulation, as provided herein, shall apply only to communications relating directly to settlement negotiations which occur on or after October 6, 2005 and prior to the conclusion of the remedy trial of this matter, unless this Stipulation is terminated earlier in accordance with terms hereof, and involve the following designated expert witnesses: Dr. Peter Moyle, Dr. Mathias Kondolf, Dr. Charles Hanson, Dr. Michael Harvey, Edward Donahue, Peter Hradelik, Daniel Steiner, and other witnesses as specifically agreed to in advance by the Parties, including expert witnesses designated by the Federal Defendants.

5. This Stipulation may be terminated by any Party hereto after the expiration of five (5) days advance written notice thereof to the attorneys of record for each Party hereto. In such event, the protections of this Stipulation shall still apply to communications occurring prior to the effective date of termination, and the termination shall be effective only as to the Party giving notice of termination.

6. This Court shall have exclusive jurisdiction to enforce this Stipulation.

7. In any proceeding to enforce this Stipulation, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees except, as to the Federal Defendants, only to the extent provided by applicable law.

**SIGNATURES ON FOLLOWING PAGE**

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Dated: October 17, 2005

SHEPPARD MULLIN RICHTER & HAMPTON, LLP

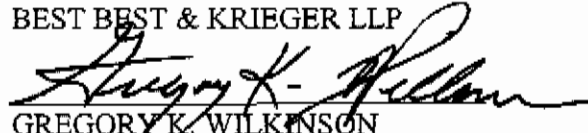
By: 

PHILIP F. ATKINS-PATTENSON  
Attorney for Plaintiffs

Dated: October 17, 2005

BEST BEST & KRIEGER LLP

By:

  
GREGORY K. WILKINSON  
Attorney for Friant Defendants

Dated: October 17, 2005

U.S. DEPT. OF JUSTICE

By:

  
DAVID B. GLAZER  
Attorney for Federal Defendants

IT IS SO ORDERED.\*

OCT 20 2005

  
GREGORY G. HOLLOWS

GREGORY G. HOLLOWS  
United States Magistrate Judge

\* The undersigned understands in signing this order that (a) evidence (written or verbal) constituting communications between the parties regarding settlement, (b) informational evidence created for the purpose of settlement communications/negotiations, or (c) evidence of memorializations of settlement communications/negotiations, are intended to be encompassed and made privileged by this order. The undersigned does not understand that the parties intended to make privileged, previously unprivileged evidence, simply because it was used in settlement negotiations. However, the manner of its use in settlement negotiations would be encompassed by this order.